

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT IN AND
FOR ORANGE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO: 2018-CA-012128-O

SHARRIF K. FLOYD

Plaintiff,

vs.

DR. JAMES ANDREWS, M.D.; DR. GREGORY
HICKMAN, M.D.; DR. CHRISTOPHER WARRELL,
M.D.; DR. TARIQ HENDAWI, M.D.; THE ANDREWS
INSTITUTE AMBULATORY SURGERY CENTER,
LLC; PARADIGM ANESTHESIA, P.A.; BAPTIST
HOSPITAL, INC.; BAPTIST HEALTH CARE
CORPORATION; GULF BREEZE HOSPITAL, INC.,
BAPTIST HOSPITAL, INC. d/b/a GULF BREEZE
HOSPITAL; AND BAPTIST PHYSICIAN GROUP, LLC,

Defendants.

MOTION TO TRANSFER VENUE

COME NOW the Defendants, James Andrews, M.D.; Christopher Warrell, M.D.; Tariq Hendawi, M.D.; Baptist Hospital, Inc.; Baptist Physician Group, LLC; and Baptist Health Care Corporation, by and through their undersigned attorneys, and hereby move to transfer venue from Orange County, Florida to Santa Rosa County, Florida, and in support thereof would show as follows:

INTRODUCTION

The Plaintiff, Sharrif Floyd, a former NFL football player, underwent right knee surgery in September, 2016, and has now sued his treating physicians for what he claims is a career-ending injury to his right leg. Mr. Floyd, who resides in Pennsylvania, filed this medical negligence action in Orange County, Florida based on events that took place entirely in Santa Rosa County, Florida. (Complaint at ¶¶ 4 – 10.) There is no allegation in the Complaint that any relevant events took place in Orange County.

The Complaint names nine defendants: Dr. James Andrews, Andrews Institute Ambulatory Surgery Center, LLC (“ASC”), Dr. Christopher Warrell, Dr. Tariq Hendawi, Dr. Gregory Hickman, Paradigm Anesthesia (“PA”), Baptist Hospital, Inc. (“BHI”), Baptist Physician Group, LLC (“BPG”), and Baptist Health Care Corporation (“BHCC”). The Complaint attempts to establish that all these Defendants are interrelated and liable each for the acts of the others: “[A]ll incidents of medical negligence occurred within the scope of the Defendant physicians’ overlapping positions with SAC, BHI, BHCC, BPG, and PA.” (*Id.* at ¶ 19.)

Of the nine defendants, seven are residents of or domiciled in Santa Rosa or Escambia Counties.¹ Only one party to this action, Defendant Christopher Warrell, M.D., now resides in Orange County. All of the allegations related to Dr. Warrell’s care, however, relate to events which occurred in Santa Rosa County. The list below summarizes the Complaint’s allegations about the Defendants’ locations and connections

¹ Santa Rosa and Escambia are neighboring counties in the Florida Panhandle.

to Plaintiff. Defendants deny certain of the allegations related to the care provided to the Plaintiff, but admit the parties' connections to Santa Rosa County.

- Dr. James Andrews, Mr. Floyd's orthopedic surgeon, practices medicine in Santa Rosa County and operated on Mr. Floyd in Santa Rosa County (Complaint at ¶ 4);
- ASC, where Mr. Floyd underwent surgery, maintains its principal office in Santa Rosa County (*Id.* at ¶ 5);
- Dr. Christopher Warrell, a former fellow with BPG, lives in Orange County but provided medical care to Plaintiff in Santa Rosa County (*Id.* at ¶ 6);
- Dr. Tariq Hendawi, a former fellow with BPG, lives in Texas but provided medical care to Plaintiff in Santa Rosa County (*Id.* at ¶ 7);
- Dr. Gregory Hickman specializes in anesthesiology, practices medicine in Santa Rosa County, and supervised Dr. Warrell and Dr. Hendawi in Santa Rosa County (*Id.* at ¶ 9);
- PA maintains its principal place of business in Santa Rosa County (*Id.* at ¶ 10);
- BHI and "BHI d/b/a Gulf Breeze Hospital" maintain their principal places of business in Escambia County (*Id.* at ¶ 11);²
- BPG maintains its principal place of business in Escambia County (*Id.* at ¶ 12); and
- BHCC maintains its principal place of business in Escambia County (*Id.* at ¶ 13.)

According to the specific allegation of the Complaint, all of the Defendants are connected to Santa Rosa County or Escambia County. All of the care provided to the Plaintiff, including the alleged negligence, occurred in Santa Rosa County.

² "BHI d/b/a Gulf Breeze Hospital" is not a legal entity. Gulf Breeze Hospital is a name by which BHI does business.

As to venue in Orange County, the Complaint merely alleges that “[v]enue is proper pursuant to Sec. 47.021, because one of the Defendants either resides or maintains a principal place of business in Orange County, Florida, within the venue of this Court.” (*Id.* at ¶ 2.) On the face of the Complaint, Dr. Warrell’s current residence is the *only* connection this lawsuit has to Orange County. All other aspects of this case favor transfer to Santa Rosa County, including the location of the parties, the location of the witnesses, and the place at which the underlying events occurred.

**MOTIONS TO TRANSFER VENUE
PURSUANT TO SECTION 47.122, FLORIDA STATUTES**

Because Dr. Warrell currently resides in Orange County, venue is technically proper in that county. *See* § 47.021, Fla. Stat. Orange County, however, is an inconvenient forum and has no actual connection to this dispute. This motion, therefore, is brought pursuant to Section 47.122, Florida Statutes, which addresses inconvenient venue or *forum non conveniens*. According to Section 47.122, “For the convenience of the parties or witnesses or in the interest of justice, any court of record may transfer any civil action to any other court of record in which it might have been brought.”

Motions to transfer venue are evidentiary. This motion is supported by affidavits from parties and key witnesses, including Dr. Andrews, Dr. Hendawi, Dr. Warrell, and representatives for BHI, BPG, and BHCC. “[W]hen a *forum non conveniens* challenge is raised, it is incumbent upon the parties to submit affidavits or other evidence that will shed necessary light on the issue of the convenience of the parties and witnesses and the interest of justice.” *Eggers v. Eggers*, 776 So.2d 1096, 1098 (Fla. 5th DCA 2001). “In

order to consider and weigh the convenience of the witnesses under section 47.122, the court must know who the witnesses are and the significance of their testimonies.” *Hall v. Animals.com, LLC*, 171 So.3d 216, 218 (Fla. 5th DCA 2015). Defendants’ affidavits, therefore, identify material witnesses and demonstrate their connections to Santa Rosa County. *See Marques v. Garcia*, 245 So.3d 900, 905 (Fla. 3d DCA 2018). The affidavits also establish that the parties to this litigation, with the exception of Dr. Hendawi and Dr. Warrell, are domiciled or reside in the Santa Rosa/Escambia County area, that the relevant events occurred in Santa Rosa County, and that all of the Defendants favor transfer from Orange County to Santa Rosa County.

**THE DEFENDANTS, WITNESSES, AND UNDERLYING EVENTS
ALL FAVOR TRANSFER TO SANTA ROSA COUNTY**

According to Section 47.122, Florida Statutes, venue may be changed for *forum non conveniens* based on any one of three factors: (1) the convenience of the parties, (2) the convenience of the witnesses, and (3) the interests of justice. In this case, all three factors are intertwined and strongly favor transfer from Orange County to Santa Rosa County. Seven of the nine Defendants are domiciled or reside in either Santa Rosa County or Escambia County, the material witnesses are located in Santa Rosa County or Escambia County, and all of the underlying events occurred in Santa Rosa County.³

³ Because Escambia is adjacent to Santa Rosa, factors that would favor transfer to Escambia also favor transfer to Santa Rosa. *Levy County v. Diamond*, 7 So.3d 564, 566-67 (Fla. 1st DCA 2009); *Botta v. Ciklin, Lubitz & O’Connell*, 222 So.3d 605, 609 (Fla. 4th DCA 2017).

Below is a partial description of the ties which the material witnesses and parties have to Santa Rosa County and Escambia County.

Dr. James Andrews

James R. Andrews, M.D. is both a Defendant and material witness in this case. He is the orthopedic surgeon who performed Mr. Floyd's knee surgery in Santa Rosa County on September 22, 2016. (Andrews Affidavit at ¶ 1.) Neither Dr. Hendawi nor Dr. Warrell performed any critical part of the procedure. (*Id.* at ¶ 2), (Hendawi Affidavit at ¶ 2), (Warrell Affidavit at ¶ 2.) Dr. Andrews is the person most knowledgeable about Mr. Floyd's surgery.

All of Dr. Andrews' interactions with Mr. Floyd, including consultations, appointments, and the surgery, took place in Santa Rosa County. (Andrews Affidavit at ¶ 4.) Every other health care provider who assisted Dr. Andrews with Mr. Floyd's treatment did so in Santa Rosa County. (*Id.* at ¶ 5.) The Complaint confirms that Dr. Andrews provided all of Mr. Floyd's medical care in Santa Rosa County.

Dr. Andrews is a nationally-renowned and highly sought-after orthopedic surgeon with an active medical practice. He resides in Escambia County and practices in Santa Rosa County, where he sees all of his patients and performs all of his surgeries. (*Id.* at ¶ 7.) It would create a hardship for Dr. Andrews to defend this lawsuit in Orange County. (*Id.* at ¶ 8.)

Dr. Tariq Hendawi

Tariq Hendawi, M.D. resides in Southlake, Texas. (Hendawi Affidavit at ¶ 1.) In September, 2016, Dr. Hendawi was a surgical fellow with BPG in Escambia County. (*Id.*

at ¶ 2.) The Complaint alleges that Dr. Hendawi provided medical care to Mr. Floyd in Santa Rosa County. (Complaint at ¶ 7.) Although Dr. Hendawi observed Mr. Floyd's knee surgery in Santa Rosa County, he did not perform any critical part of the procedure. (Hendawi Affidavit at ¶ 2.) Dr. Hendawi has no connection to Orange County. (*Id.* at ¶ 3.) It would be more convenient for Dr. Hendawi to defend himself in Santa Rosa County than Orange County. (*Id.* at ¶ 4.)

Dr. Christopher Warrell

Dr. Christopher Warrell resides in Orange County, Florida. (Warrell Affidavit at ¶ 1.) In September, 2016, Dr. Warrell was a surgical fellow with BPG, observing Dr. Andrews in Santa Rosa County. (*Id.* at ¶ 2.) The Complaint alleges that Dr. Warrell provided medical care to Mr. Floyd in Santa Rosa County. (Complaint at ¶ 6.) Although Dr. Warrell scrubbed for Mr. Floyd's knee surgery in Santa Rosa County, he did not perform any critical part of the procedure. (Warrell Affidavit at ¶ 2.) All of the events giving rise to Mr. Floyd's claim against Dr. Warrell arose in Santa Rosa County. (*Id.* at ¶ 3.) Dr. Warrell joins in the request to change venue. (*Id.* at ¶ 4.)

BHI

Defendant BHI is a not for profit corporation which owns and operates Baptist Hospital in Escambia County and Gulf Breeze Hospital in Santa Rosa County. (Raynes Affidavit at ¶ 2.) BHI's principal place of business is in Escambia County. (*Id.* at ¶ 1.) BHI does business in Escambia County and Santa Rosa County. (*Id.* at ¶ 3.) All of BHI's officers, directors, and employees reside and/or work in Escambia or Santa Rosa Counties. (*Id.* at ¶ 4.) Mr. Floyd's Complaint alleges repeatedly that BHI and its co-

Defendants are all interrelated. Every BHI document related to these allegations is located in Santa Rosa County or Escambia County. (*Id.* at ¶ 5.) Every BHI agent, employee, or representative with information related to this allegation is located in Santa Rosa County or Escambia County. (*Id.* at ¶ 6.) It would create an undue hardship for these material witnesses to have to appear for this case in Orange County.

Scott Raynes is BHI's President and resides in Santa Rosa County. (*Id.* at ¶ 1.) Given the allegations in Mr. Floyd's complaint, Mr. Raynes is a material witness. (*Id.* at ¶ 7.) It would be convenient for him to appear as a witness in Santa Rosa County, but it would be an undue hardship for him to travel to Orange County. (*Id.* at ¶ 8.)

BPG

Defendant BPG, which employed Dr. Warrell and Dr. Hendawi, is a wholly owned subsidiary of BHI. BPG's principal place of business is in Escambia County. (Cardwell Affidavit at ¶ 2.) BPG does business in Escambia County and Santa Rosa County. (*Id.* at ¶ 3.) All of BPG's officers, directors, and employees are located in Escambia or Santa Rosa Counties. (*Id.* at ¶ 4.) Mr. Floyd's Complaint alleges repeatedly that BPG and its co-Defendants are all interrelated. Every BPG document related to these allegations is located in Santa Rosa or Escambia Counties. (*Id.* at ¶ 5.) Every BPG agent, employee, or representative with information related to this allegation is located in Santa Rosa County or Escambia County. (*Id.* at ¶ 6.) It would create an undue hardship for these material witnesses to have to appear to testify in this case in Orange County.

Julie Cardwell is the President of Baptist Medical Group and resides in Escambia County. (*Id.* at ¶ 1.) Ms. Cardwell is knowledgeable about BPG and its corporate

structure. Given the allegations in Mr. Floyd's complaint, Ms. Cardwell is a material witness. It would be convenient for her to appear as a witness in Santa Rosa, but it would be an undue hardship for her to travel to Orange County. (*Id.* at ¶ 7.)

BHCC

Defendant BHCC is a not for profit corporation which is the sole member of Baptist Hospital, Inc., a not for profit corporation. (Faulkner Affidavit at ¶ 2.) BHCC's principal place of business is in Escambia County. (*Id.* at ¶ 1.) BHCC does business in Escambia and Santa Rosa Counties. (*Id.* at ¶ 3.) All of BHCC's officers, directors, and employees are located in Escambia County or Santa Rosa County. (*Id.* at ¶ 4.) Mr. Floyd's Complaint alleges repeatedly that BHCC and its co-Defendants are all interrelated. Every BHCC document related to these allegations is located in Santa Rosa County or Escambia County. (*Id.* at ¶ 5.) Every BHCC agent, employee, or representative with information related to this allegation is located in Santa Rosa County or Escambia County. (*Id.* at ¶ 6.) It would create an undue hardship for these material witnesses to have to appear for this case in Orange County.

Mark Faulkner is BHCC's President and resides in Santa Rosa County. (*Id.* at ¶ 1.) Given the allegations in Mr. Floyd's complaint, Mr. Faulkner is a material witness. (*Id.* at ¶ 7.) It would be convenient for him to appear as a witness in Santa Rosa, but it would be an undue hardship for him to travel to Orange County. (*Id.* at ¶ 8.)

Other Material Witnesses

The Complaint establishes that all alleged acts of medical negligence took place in Santa Rosa County. Other material witnesses, therefore, include the people who assisted

with Mr. Floyd's care in Santa Rosa County. These witnesses include, but are not limited to, nurses, lab technicians, radiologists, physicians' assistants, and physical therapists, all of whom are in Santa Rosa and Escambia Counties. Defendants are unaware of a single witness located in Orange County, other than Dr. Warrell, who did not participate significantly in Mr. Floyd's surgery. Mr. Floyd's chosen venue, therefore, would create an undue hardship for every material witness.

**ORANGE COUNTY IS A *FORUM NON CONVENIENS*
AND VENUE SHOULD BE TRANSFERRED TO SANTA ROSA COUNTY**

As noted above, venue in Orange County is technically proper, because Dr. Warrell resides in that county. *See* § 47.201, Fla. Stat. Orange County, however, has no actual connection to Mr. Floyd's lawsuit. It is the epitome of an inconvenient forum. Section 47.122, Florida Statutes, provides that venue may be changed to a more appropriate forum based on the convenience of the parties and witnesses, as well as the interest of justice. The case law interpreting Section 47.122 overwhelmingly favors a change of venue in this case from Orange County to Santa Rosa County.

Plaintiff's Choice of Forum is a Minor Consideration

Generally, a lawsuit should be tried "in the area where the cause of action arose whenever consonant with the residence and convenience of the parties." *Peterson, Howell & Heather v. O'Neill*, 314 So.2d 808, 810 (Fla. 3d DCA 1975). In Florida, plaintiffs may choose their venue, but when a defendant moves to change venue for *forum non conveniens*, the plaintiff's choice is neither paramount nor a significantly important factor. *Hu v. Crockett*, 426 So.2d 1275, 1278 (Fla. 1st DCA 1983). "[O]nce a

motion to transfer venue based on inconvenient forum is filed, the plaintiff's forum selection is no longer the factor of overriding importance." *Botta*, 222 So.3d at 609 (internal quotation omitted).

Factors to Consider Under Section 47.122

The three factors of Section 47.122, Florida Statutes, are set forth in the disjunctive. Florida courts interpreting Section 47.122, however, tend to focus on the totality of the issues tying a case to a more convenient forum. *See Kelly-Springfield Tire Co. v. Moore*, 355 So.2d 451, 452 (Fla. 3d DCA 1978) (case should have been transferred from Dade County to the 10th Judicial Circuit when the accident occurred near the City of Sebring, the defective product was sold and installed in Sebring, certain parties were residents of Sebring, and many material witnesses lived in Sebring); *Pep Boys v. Montilla*, 62 So.3d 1162, 1166 (Fla. 4th DCA 2011) (case should have been transferred from Broward County to Sarasota County when all the defendants requested the case to be transferred to Sarasota County, the material witnesses were in Sarasota County, the defendant with employees in Broward County supported transfer to Sarasota County, and Broward County had little connection to the litigation).

Of the three factors in Section 47.122, "[t]he convenience of the witnesses is probably the single most important consideration This is based on the presumption that material witnesses should be located near the courtroom to permit live testimony." *Hu*, 426 So.2d at 1279. In this case, the convenience of the witnesses, some of whom are also Defendants, overwhelmingly favors transfer to Santa Rosa County. There are two primary contentions in Mr. Floyd's complaint: (1) someone was medically negligent, and

(2) all of the defendants are interrelated and, therefore, liable each for the other. Every witness who can speak to these issues is in Santa Rosa County or adjacent Escambia County. Mr. Floyd's Florida based health care providers are all in those counties, as are all of the witnesses with knowledge of the corporate and agency relationships among the Defendants.

This case has no material witnesses in Orange County. Dr. Warrell happens now to live there, but neither he nor Dr. Hendawi participated significantly in Mr. Floyd's surgery, and both request transfer to Santa Rosa County. (Warrell Affidavit at ¶¶ 2, 4), (Hendawi Affidavit at ¶¶ 2, 4). If convenience of the witnesses is indeed the most important consideration in a motion to change venue pursuant to Section, 47.122, then venue should be transferred to Santa Rosa County on that issue alone.

“The third factor [under Section 47.122], that of the interests of justice, is a catch-all consideration including many considerations” *Botta*, 222 So.3d at 609 (quoting *Pep Boys*, 62 So.3d at 1165). A persuasive factor to consider under the umbrella of the interest of justice is lack of a meaningful connection between the lawsuit and the plaintiff's chosen forum. Transfer is appropriate when the chosen forum has little connection to the litigation. *Lathan Const. Corp. v. McDaniel Grading, Inc.*, 695 So.2d 354, 355 (Fla. 5th DCA 1996) (“One problem with this case is that, while venue may not be *improper* in Orange County, it also is not the best forum. Orange County has no real connection with this suit. The sole defendant in the Orange County suit is American-a foreign insurer. On the other hand, this matter strongly involves Osceola County.”) (emphasis in original); *Levy County*, 7 So.3d at 566-67 (“[I]t is clear from the record that

the controversy has little or no connection to Leon County, the forum selected by the plaintiffs. The property that is the subject of the inverse condemnation claim is situated in Levy County, the official documents relating to the property are on file in the clerk's office in Levy County and nearly all of the potential witnesses live in Levy County or in the immediate vicinity."); *Westchester Fire Ins. Co. v. Fireman's Fund Ins. Co.*, 673 So.2d 958, 959 (Fla. 3d DCA 1996) ("Our district should not be a forum for cases that have little or no connection to Dade and Monroe counties. Therefore, it is the stated policy of our Court to literally apply the doctrine of forum non-conveniens where there is little else other than the plaintiff's choice of venue and where witnesses reside in other more suitable venues.")

The Case Law Favors Changing Venue to Santa Rosa County

There is abundant case law to guide the Court in weighing the convenience of Orange County versus Santa Rosa County. For example, in *Hertz Corp. v. Rentz*, 326 So.2d 216, 217 (Fla. 4th DCA 1976), the plaintiff filed suit in Orange County based on an automobile accident that occurred in Jackson County, and the defendant unsuccessfully petitioned the trial court to transfer the case to Jackson County. When the motion was denied, the defendant appealed. *Id.* The 4th DCA reversed, because the primary witnesses resided in Jackson County, the accident occurred and was investigated in Jackson County, and a portion of the plaintiff's medical treatment occurred in Jackson County. *Id.* The court also noted that "[t]he only connection which Orange County has with the case is that the nonresident corporate defendant has an agent or representative

there.” *Id.* Accordingly, the trial court abused its discretion by keeping the case in Orange County. *Id.*

In *Cooper Tire & Rubber Co. v. Chavez*, 8 So.3d 1157 (Fla. 3d 2009), the plaintiffs brought a products liability suit in Miami-Dade County against a tire manufacturer, a tire seller, and a vehicle manufacturer. The defendants moved to transfer venue to Lee County, because the underlying accident occurred there, the individuals involved in the accident resided there, and the primary witnesses resided there. *Id.* at 1158. The trial court denied the motion and the appellate court reversed, noting that the only connections the case had to Miami-Dade were that one of the corporate defendants and one of the defendant law firms (which actually joined in the motion to transfer) were located in Miami. *Id.* at 1159. The 4th DCA supported its holding by citing several cases in which trial courts abused their discretion by declining to transfer cases to venues with stronger connections to the litigation. *See id.* (citing *Morrill v. Lytle*, 893 So.2d 671, 673 (Fla. 1st DCA 2005); *P.V. Holding Corp. v. Tenore*, 721 So.2d 430, 431 (Fla. 3d DCA 1998); *Sullivan v. Klein*, 691 So.2d 21, 22 (Fla. 3d DCA 1997); *Inter-American Sunbelt Corp. v. Borozny*, 512 So.2d 287, 288 (Fla. 3d DCA 1987); *Kelly-Springfield*, 355 So.2d at 452).

In *Botta v. Ciklin*, the plaintiff, a law firm, filed a declaratory action against three defendants. 222 So. 2d at 606-07. The plaintiff brought suit in Broward County, and the defendants moved to transfer venue to Seminole County under the convenience provisions of Section 47.122. *Id.* The trial court denied the motion, but the 4th DCA reversed and remanded, because the convenience of the parties, the convenience of the

witnesses, and the interests of justice favored Seminole County. *Id.* at 609. First, as to the convenience of parties, two of the defendants lived in Seminole County and the other lived in adjacent Brevard County. *Id.* The plaintiff law firm was located in Broward, but the appellate court gave this little consideration, since the firm acted as its own counsel, and “the convenience of the attorneys is usually accorded very little, if any, weight.” *Id.* (internal quotation omitted). “Second, the convenience of the witnesses, probably the single most important consideration of the three statutory factors, favor[ed] Seminole County.” *Id.* (internal quotation omitted). The defendants established through affidavits that the material witnesses in the case primarily resided in and around Seminole County and would have to inconveniently travel to Broward County if the case was not moved. *Id.* Third, the interests of justice favored Seminole County, because all of the material events underlying the litigation occurred there, and the case had very little connection to Broward County. *Id.*

This case has no legally significant connection to Orange County. The case law interpreting Section 47.122 supports transferring this case to Santa Rosa County.

All of the material parties are located in Santa Rosa County and adjacent Escambia County. The material witnesses are all in Santa Rosa and Escambia Counties. The interests of justice also favor trying this case in Santa Rosa, where all of the underlying events occurred. The relevant factors all weigh heavily in favor of transferring venue to Santa Rosa County.

CONCLUSION

Based on the foregoing, Defendants Dr. Andrews, Dr. Hendawi, Dr. Warrell, BHI, BPG, and BHCC respectfully request that the Court transfer this case to the Circuit Court in and for Santa Rosa County, Florida.

/s/ Jack W. Lurton III

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via the Florida Court's e-Filing Portal on this 28th day of December, 2018 to:

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